

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
<b>Comment Requested for Inquiry Required</b>	)	<b>MB Docket No. 05-28</b>
<b>By the Satellite Home Viewer Extension</b>	)	
<b>And Reauthorization Act on Rules Affecting</b>	)	<b>DA 05-169</b>
<b>Competition in the Television Marketplace</b>	)	

**Comments By:**

**The Pioneer Telephone Association, Inc. d/b/a Pioneer Communications (“Pioneer”)**

## **Background**

Pioneer Communications is an independent telecommunications service provider, serving approximately 9,500 cable television subscribers across twenty-three small communities in rural western Kansas. Pioneer currently offers more than 64 channels of Basic tier programming, more than 50 channels of Premium programming, 22 channels of Pay-per-view programming, and more than 100 channels of digital tier programming, including more than 50 channels of music.

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In the interest of promoting a fair marketplace and the consumer benefits of balanced competition amongst multichannel video service providers, Pioneer Communications hereby requests the reexamination and revision of existing regulations to permit cable operators, particularly those in rural areas that are unserved or underserved by local broadcasters, to import broadcast signals. As practiced today, the rules of retransmission consent and nonduplication place rural cable operators in an unfavorable position and severely limit their ability to compete with direct broadcast satellite (DBS) in the delivery of broadcast signals to consumers. Additionally, to further level the playing field, cable operators in these rural markets should be given the same opportunity as has been afforded to direct broadcast satellite providers in the SHVERA.

Without revision, DBS providers will continue to possess an unfair advantage, so long as cable operators are excluded from this option. If given the same opportunity to negotiate for carriage of broadcast stations from neighboring or distant markets, small cable operators such as Pioneer would be able to compete fairly with direct broadcast satellite providers and more capable of serving our rural customers with broadcast programming choices that are more pertinent to their preferences and daily lives.

Many of the communities in Pioneer Communications' cable service area are geographically located in a so-called "White Area", where they are unable to receive some, or all, of the local analog or digital broadcast stations via standard over-the-air transmissions. For example, if a customer in Coolidge, Kansas, were to erect their own analog or digital antenna in an attempt to receive the signal of KSNG/NBC in Garden City, Kansas, KUPK/ABC in Garden City, Kansas, or KBSD/CBS in Dodge City, Kansas, they would not be able to receive the signal of those broadcasters with any fidelity. The only access these rural customers have to such broadcast stations are via retransmission over Pioneer Communications cable television system.

As illustrated in the figures below, roughly one-half of the rural western Kansas communities served by Pioneer Communications' cable television service are geographically located completely beyond the Grade B contour of western Kansas' principal commercial broadcast affiliate stations. Figure 1 reveals that fifteen of the twenty-three communities served by Pioneer's cable service are beyond the broadcast reach of KBSD, the western Kansas CBS affiliate station. This shortfall is directly attributable to the fact that the broadcaster has failed to invest in adequate transmission facilities to appropriately serve the designated market area directly via over-the-air signal.

(Figures Following)

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Figure 1. KBSD – CBS Broadcast Contour and Pioneer Communications Cable TV Service Areas

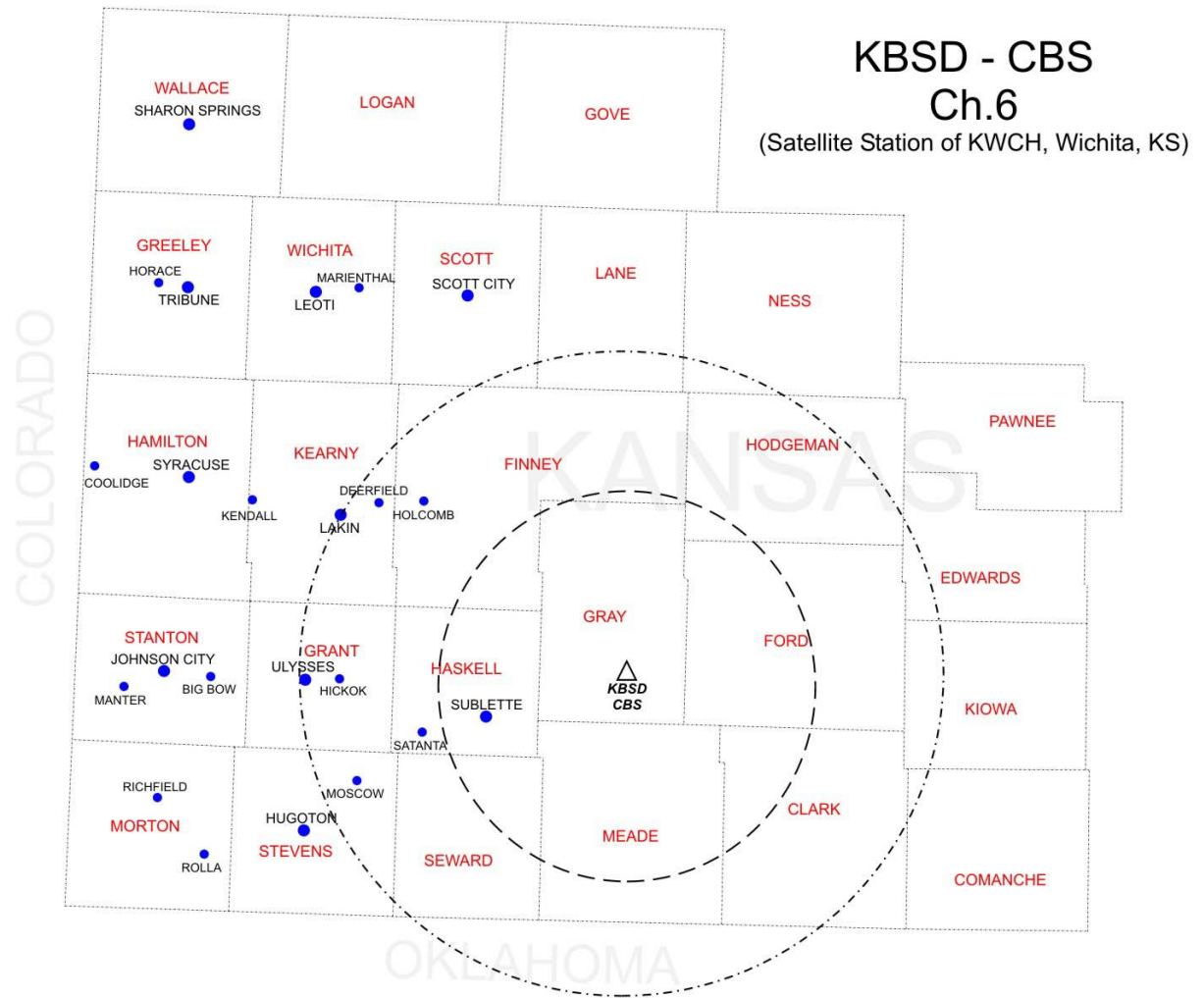


Figure 2. KSNG – NBC Broadcast Contour and Pioneer Communications Cable TV Service Areas

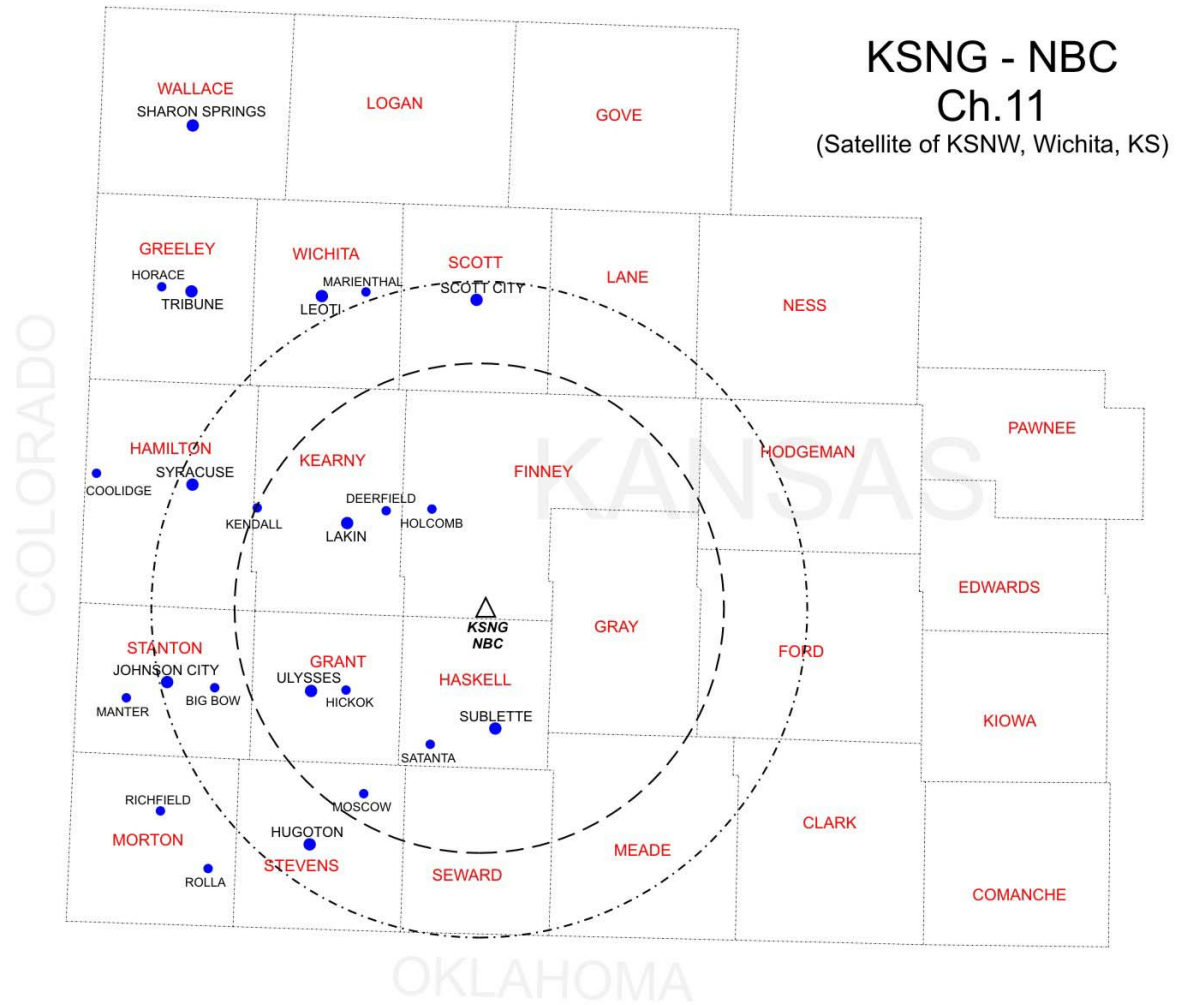
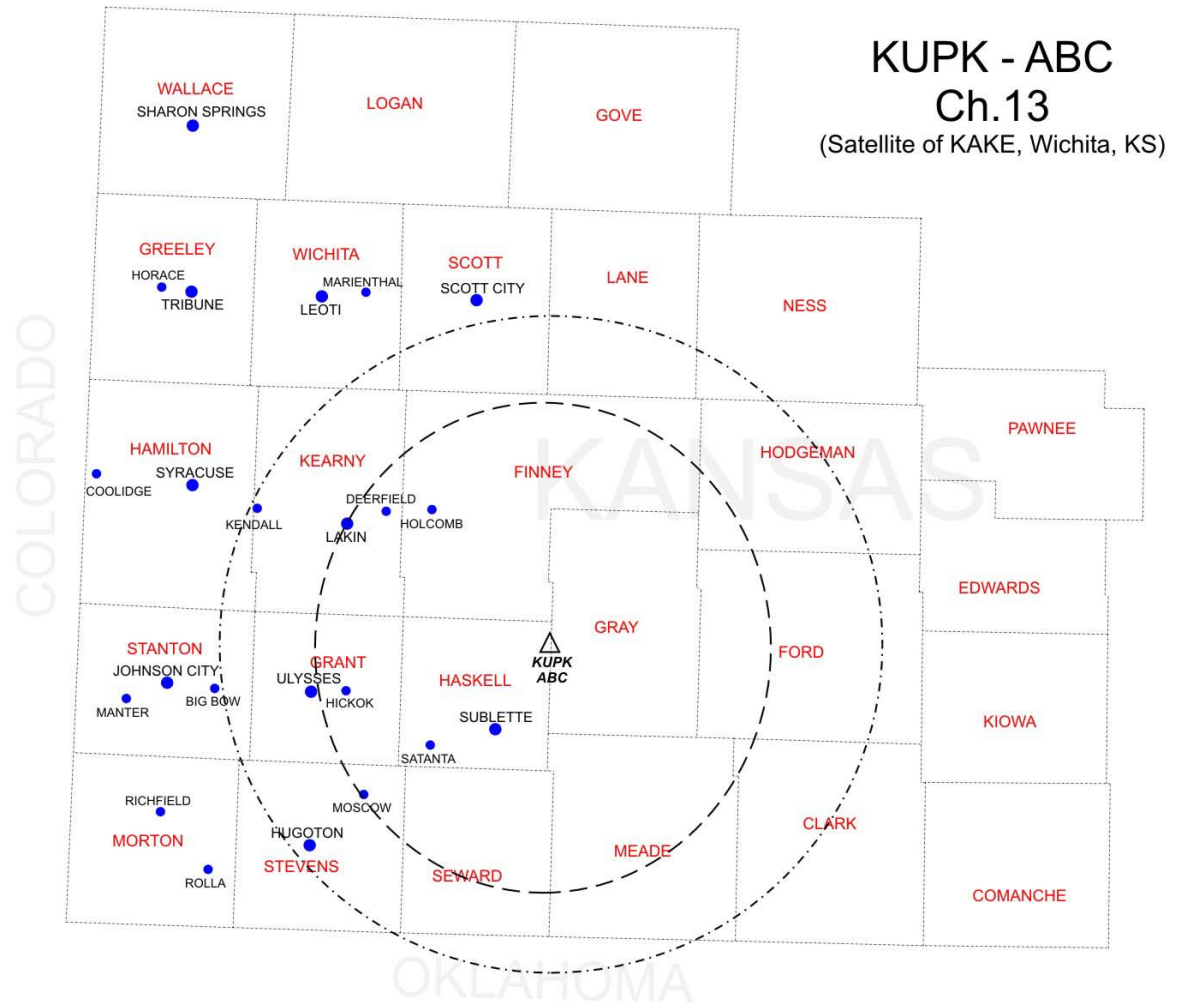


Figure 3. KUPK – ABC Broadcast Contour and Pioneer Communications Cable TV Service Areas



In the event a consumer from this area were to opt for subscription service via DBS they may be given their choice of “local” broadcast stations, including broadcast stations from the eastern Colorado market, as opposed to being forced to elect for reception of the Kansas broadcast stations originated from Wichita, Kansas. However, cable customers and cable operators in these service areas are not granted the same opportunity. The Kansas broadcaster denies those customers the right to choose reception of an eastern Colorado market station, while at the very same time, the Kansas broadcaster fails to deliver an adequate over-the-air transmission to serve that consumer. Effectively, the broadcaster lays claim to an area that they do not serve.

Currently, if not for the considerable engineering effort and expense of the cable operator, many of these rural communities would not receive a retransmitted broadcast signal of the western Kansas affiliate stations of the CBS, NBC, ABC, FOX, UPN and WB broadcasters. If given access to the importation of neighboring or distant broadcast stations, small cable operators such as Pioneer would undeniably be able to retransmit broadcast television signals of far better quality to rural customers.

Positioned along the state line dividing Kansas and Colorado and situated midway between the market areas of Wichita and Colorado Springs/Denver, Pioneer's cable customers in rural western Kansas have repeatedly requested to have improved choice in being able to see the Wichita and/or eastern Colorado market broadcast stations. The consumers' interest in both television markets falls in line with their established interests in terms of commerce, weather, news, sports, and entertainment in both markets. Not only is much of the Pioneer cable service area located adjacent to Colorado, but five of the western Kansas communities served by Pioneer are resident in the Mountain Time zone.

These interests are conveyed most succinctly in the comments Pioneer has received directly from its cable customers. As an example, attached in Appendix I are copies of a number of letters written by Pioneer Communications' cable customers in response to a 2001 decision by the western Kansas KBSD-CBS station, their KWCH Wichita affiliate, and corporate owner, Media General, to deny retransmission of an eastern Colorado market CBS station in the Pioneer Communications cable service area.

Echoing the resounding requests of our customers, Pioneer has issued repeated requests to the broadcast stations in western Kansas to permit our cable system to carry broadcast stations from the neighboring eastern Colorado market. The consumer interests behind these requests have fallen on deaf ears with the western Kansas broadcasters, and the requests have been consistently rejected on the grounds of non-duplication. These denials comes in spite of the fact that the signal transmitted for each of these western Kansas stations fails to adequately reach and serve a number of rural communities within the very geographical zone to which they claim this right, namely those counties directly bordering or near to the Colorado-Kansas boundary.

Yet the cable customers in the service area adjacent to the Colorado border are required to view programming only from the Wichita broadcaster, via their western Kansas affiliate stations, despite the population's established proximity, affinity, and identity with the eastern Colorado market. As evidenced in the communications from our customers, the Wichita-oriented stations often fail to provide news, weather and programming that is meaningful and pertinent to the lives of those who live along the Colorado border.

If Pioneer were granted the same authorization as that of DBS providers to import eastern Colorado broadcast stations to our cable customers, then we would, first and foremost, be better enabled to satisfy the needs and demands of the consumer, and also be in a more balanced position to provide multichannel video services directly competitive to those of DBS.

The broadcasters in western Kansas have become expressly restrictive in setting the terms of retransmission consent, and have prohibited cable carriage of any western Colorado market broadcast stations in the Pioneer Communications service area. The western Kansas broadcasters have asserted this condition, regardless of whether or not the western Kansas broadcast station actually even serves these communities with an adequate broadcast signal.

In fact, in the Pioneer Communications cable television system, there are a number of communities that would not be able to receive the signal of the western Kansas broadcaster at all, if it were not for the cable operator's own considerable effort and expense to receive and retransmit the broadcast signal. Very simply, in many cases the western Kansas broadcast stations either do not serve, or appreciably underserve the area. However, this is the very same area to which they lay claim in their assertion of nonduplication rights.

Ultimately, in the interest of improved quality and improved choice for the consumer, Pioneer recommends that the Commission no longer allow broadcast stations to claim exclusive rights to an area which they do not adequately serve. The legitimacy of such domain comes into question when the broadcaster fails to provide a "good quality" over-the-air signal to the entirety of the market. In the case of broadcasters in rural western Kansas, there exists a considerable disparity

between their territorial claim of the area artificially designated by the Nielsen DMA, and the actual footprint where they succeed in providing broadcast services.

Such revisions would also serve to expedite the digital television transition objectives of the Commission. Given the authority to pursue retransmission consent for broadcasts from neighboring or distant markets, rural area cable operators would then have more complete access to digital broadcast signals. In the case of Pioneer Communications' cable service area, only one commercial broadcaster serving the rural southwestern Kansas market currently provides a digital broadcast signal of adequate strength to be received and retransmitted at Pioneer Communications headend facilities in Ulysses. Given the opportunity to negotiate carriage with stations from other markets, Pioneer would then be able to deliver a number of other previously unavailable digital broadcast signals.

Furthermore, two of the four commercial broadcast stations in the area have recently made statements that they have no immediate plans to update and transition their analog broadcast facilities to digital. They have indicated that they would not make this investment until such a time as mandated to do so. Given these indicators, Pioneer is concerned that consumers in the rural market of western Kansas who receive their programming via over-the-air antenna or cable television will not be allowed access to the majority of digital broadcast programming for many years to come. Overall, situations such as this are set to delay the goal of the Commission, and of the nation, to complete the digital television transition.

Pioneer's cable customers have repeatedly expressed a legitimate desire to receive broadcast programming from the neighboring eastern Colorado market served by stations in Pueblo, Colorado Springs, and/or Denver. In support of the interests of our customers, and Pioneer's principal mission to provide video programming services that are affordable and meaningful to the residents of our rural communities, we ask that the Commission consider revision of the nonduplication rule. In cases such as those that exist in the western Kansas market, where the local affiliate station's signal is admittedly weak or altogether absent, we believe that the cable operator should be granted the opportunity to elect to carry the analog and/or digital signal of broadcast affiliate of a neighboring market, either exclusively, or in addition to "local" affiliate station's signal. Today such opportunities are denied the cable consumer and the cable operator by way of the local broadcaster's assertion of nonduplication rights.

Pioneer would also recommend that the SHVERA be revised in so much as it grants opportunities of broadcast retransmission to DBS providers that are not equitably afforded to rural cable operators. While DBS providers have been given authorization to offer out-of-market stations and distant digital stations to a number of communities and rural service areas in western Kansas, Pioneer, as a cable operator, has been denied that opportunity under the nonduplication restrictions imposed by local market broadcasters. As a multichannel video provider serving rural communities in western Kansas that are otherwise severely underserved by the local market broadcast stations, Pioneer Communications would ask to be given the same opportunity to negotiate retransmission consent from both the local designated market area broadcasters and those of neighboring or distant markets.

If left in place without revision, these rules and regulations will continue to have an adverse affect on competition in the multichannel video marketplace. Customers that wish to obtain such out-of-market analog and digital broadcast stations will be left with no competitive option, other than subscription to a DBS service. In the end, it is simply unreasonable that such unbalanced conditions afford greater choice in broadcast programming carriage over DBS, and at the same time, limit such choice for rural cable operators and their customers.

In order to remain competitive and in order to continue to provide a viable alternative to DBS service, it is critical that Pioneer be allowed to deliver commercial broadcast networks to cable customers in rural western Kansas, under the same provisions and conditions that are afforded to DBS providers.